

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SCOTT T. BALLOCK

Case No.: 1:17-CV-52

Plaintiff,

v.

JURY TRIAL REQUESTED

**ELLEN RUTH COSTLOW,
STATE TROOPER MICHAEL KIEF,
STATE TROOPER RONNIE M. GASKINS,
and
STATE TROOPER CHRIS BERRY,**

Defendants.

**PLAINTIFF'S OPPOSITION TO TROOPER DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Excerpts from the deposition of Michael A. Kief:

Pages 69-70, cited at page 8.
Page 100, cited at page 12.
Pages 100-101, cited at page 12.
Page 102, cited at page 12.
Page 108, cited at page 12.
Page 110, cited at page 12.
Pages 104-105, cited at page 13.
Pages 138-139, cited at page 16.
Page 140, cited at page 16.
Pages 147-148, cited at page 13.
Page 107, cited at page 15, footnote 17.

Pages 139-140, cited at page 16.
Pages 52-53, cited at page 17.
Page 55, cited at page 17.
Page 61, cited at page 17.
Pages 50-51, cited at page 17.
Page 43, cited at page 17.
Page 107, cited at page 20.
Page 107, cited at page 21.

Exhibit No. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF WEST VIRGINIA

* * * * *

SCOTT T. BALLOCK,

*

Plaintiff

* Case No.

vs.

* 1:17-CV-52

ELLEN RUTH COSTLOW,

*

STATE TROOPER MICHAEL

*

KIEF, STATE TROOPER

*

RONNIE M. GASKINS,

*

STATE TROOPER CHRIS

*

BERRY,

*

Defendants

*

* * * * *

DEPOSITION OF

MICHAEL KIEF

May 28, 2019

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Page 66

1 know, your best, honest recollection and testimony about
2 all this stuff. And it's not --- you know, it's not a
3 contest or ---

4 A. Sure.

5 Q. --- anything of that nature.

6 All right.

7 So Ellen Ruth Costlow comes in to see you the
8 evening of the same day that you called her?

9 A. I believe it was the same evening.

10 Q. To the best of your memory?

11 A. Yes, sir.

12 Q. Tell me what you remember. What was your
13 impression when --- when she came in to see you?

14 A. She --- she came to the state police barracks.

15 She sat down, and she --- well, I had a conversation
16 about her and Trooper Berry, which she denied having an
17 affair with Trooper Berry.

18 She then went on to say she was in the middle
19 of a divorce or in --- in the process of divorce and that
20 her soon to be ex-husband would not stop contacting her,
21 that she was being harassed daily with emails and text
22 messages.

23 Q. You say Ellen Ruth Costlow denied having a
24 romantic relationship with Christ Berry. Did she deny

Page 68

1 Q. Let me see if this might jog your memory a
2 little.

3 A. Okay.

4 Q. And again, we can take the time necessary to
5 get into some of these documents.

6 A. Sure.

7 Q. And I am going to show you some documents in
8 the course of this, but you know, you're a
9 straightforward, attentive witness, and you have an
10 impressive memory. So we're covering a lot of ground
11 without the time necessary for a lot of document work.
12 So I'm going to take advantage of that.

13 There came a time when my client, Scott
14 Ballock, called and talked to you and he asked about the
15 fact that state police went to his estranged wife's
16 residence. And he questioned you as to why there was no
17 report of that police activity.

18 A. Yes, sir.

19 Q. And you were a bit --- affronted, I believe
20 would be a fair way to put it, by his questioning you
21 along that line.

22 A. I think that's a mischaracterization.

23 Q. Okay.

24 Well, let me just ask you personally, do you

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1 knowing Trooper Berry?

2 A. No. No, she --- I don't believe she did deny
3 knowing Trooper Berry.

4 Q. Okay.

5 Tell me what you remember in that direction.

6 A. I really don't remember a lot. I remember
7 something to the effect that Trooper Berry was up in her
8 neighborhood conducting some sort of investigation. But
9 I don't know the specifics of the --- I don't remember
10 the specifics of the investigation or why he was up in
11 that neighborhood doing that.

12 Q. We do have some documentation on that. In
13 fact, I can show you documentation --- and this is from
14 2013 ---

15 A. Uh-huh (yes).

16 Q. --- when the 911 call was placed.

17 A. Okay.

18 Q. And the 911 call resulted in some state police
19 responding to the Costlow residence. Maybe you reviewed
20 some of that evidence in preparation for the deposition
21 today? No --- no bells going off?

22 A. No bells going off, sir. I know --- I know the
23 state police at least went up there at least once, but
24 I ---.

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1 remember having a conversation with Scott?

2 A. I remember having a conversation with Scott.

3 Q. You do remember that?

4 A. Yes.

5 Q. Okay.

6 Good. So tell me about his conversation that
7 you had with Scott Ballock.

8 A. From what I remember about the conversation, he
9 called in and asked about an incident that happened at
10 his house. And I believe he wanted a report, if I
11 remember correctly.

12 Q. Uh-huh (yes).

13 A. And ---.

14 Q. I believe he did.

15 A. Okay.

16 Q. Yeah.

17 A. And I explained how to get that report. Well,
18 he --- he asked me if there was a report filed. I
19 checked. There was not a report filed. So he questioned
20 me on why there wasn't a report filed.

21 Q. Okay.

22 You presumably went on your computer system,
23 called up a database in some fashion or whatever, and
24 were able to determine that there was no report on file?

18 (Pages 66 to 69)

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1 A. The CI log did not show a report on file.
2 **Q. What log?**
3 A. Criminal Investigation log.
4 **Q. Okay.**
5 **So you told Scott Ballock that there was no**
6 **report prepared?**
7 A. Correct.
8 **Q. What else do you remember about the**
9 **conversation?**
10 A. I believe he asked me why there wasn't a report
11 filed. And I explained to him, you know, based upon the
12 investigating officers or the responding officers'
13 observations, and you know, it's up to them to --- to
14 initiate a report if they feel that it needs to be
15 initiated. But, you know, if they --- if, you know, a
16 trooper goes on a call, and there's no substance to that
17 call, then a report probably isn't going to be filed.
18 **Q. Okay.**
19 **What do you remember about the substance of the**
20 **call, that is to say --- I realize as I listen to my own**
21 **questioning that that's probably a confusing way to**
22 **phrase it. Scott Ballock called you, told you that state**
23 **police had been to his residence, and his estranged wife**
24 **was currently living there.**

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1 **And he wanted a copy of the report. You looked**
2 **in the Criminal Investigation log on your computer and**
3 **told him there was no report. And he wanted to know why.**
4 **You told him that the trooper who responded must have**
5 **judged it unworthy of a report.**
6 **Is that ---?**
7 A. Correct. Yes, sir.
8 **Q. Okay.**
9 **Do you know anything about what happened when**
10 **that --- who that trooper was, or what he found?**
11 A. From what I remember, it was a verbal
12 altercation at his house or his --- that residence.
13 **Q. All right.**
14 **They were estranged. Do you --- do you guys in**
15 **the state police use that word, estranged?**
16 A. We can.
17 **Q. When --- when someone is married to another**
18 **person, but by order of the family court, usually,**
19 **they're not living together.**
20 A. Correct.
21 **Q. Then they are said to be estranged.**
22 A. Yes, sir.
23 **Q. That's the way we sue that word in the law.**
24 **You guys use it that way, too?**

Page 72

1 A. We can. Yes, sir.
2 **Q. Okay. All right.**
3 **So it is accurate to say that his wife lived**
4 **there, but he did not because they were going through a**
5 **divorce at the time. And that squares with your best**
6 **memory of what you learned about all of this ---**
7 A. Yes, sir.
8 **Q. --- at the time?**
9 **Who was the state police trooper who went to**
10 **the house?**
11 A. I can't remember that, sir. I don't remember
12 that.
13 **Q. All right.**
14 A. I'd hate to speculate.
15 **Q. All right.**
16 **Did you make any effort to find out at the time**
17 **who the trooper was?**
18 A. I can't remember, sir.
19 **Q. You don't remember if you tried to find out?**
20 A. No, sir. I can't remember that.
21 **Q. How was Scott Ballock in his attitude and ---**
22 A. I remember ---.
23 **Q. --- in the course of this conversation?**
24 A. I believe his discourse came from when I told

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1 him there wasn't a police report filed. And he
2 continually questioned me upon that. And I really didn't
3 have another answer for him except for the fact that it
4 was what it was, a verbal altercation that the
5 investigating --- or the responding officer didn't feel
6 like a report needed to be filed.
7 **Q. Okay.**
8 A. But he kept pressing upon that issue.
9 **Q. Was there any policy or practice in effect at**
10 **the state police at the time of this response to the**
11 **Ballock residence in Thistledown as to whether a report**
12 **should be filed if a child, minor child, was present?**
13 A. No, sir.
14 **Q. If Summer Ballock, a minor child at the time,**
15 **was present at the Ballock residence when her mother and**
16 **Kenny Ice, Junior were having an argument, and the state**
17 **police came to the house about it, there'd be no**
18 **expectation on the part of the state police that the**
19 **trooper should formalize what they did, what they found,**
20 **what they did, in order to safeguard the interests of**
21 **that minor child?**
22 A. It depended on the escalation of the --- of
23 the incident.
24 **Q. Okay.**

19 (Pages 70 to 73)

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1 Q. Okay.
2 A. Yes.
3 ATTORNEY CROOKS: Let's mark this Number
4 3.
5 ---
6 (Whereupon, Deposition Exhibit 3, 8/22/13
7 Email, was marked for identification.
8 ---
9 ATTORNEY CROOKS: And I don't know that I
10 have extra copies of this, so I'll indulge the time
11 necessary for your lawyer and Mr. Phillips both. I'll
12 let you start if you want, Mark.
13 ATTORNEY PHILLIPS: If you don't mind,
14 I'll just look over his shoulder.
15 ATTORNEY CROOKS: Sure.
16 And let me go ahead and ask the reporter
17 to mark the next one in sequence that I'm going to ask.
18 ---
19 (Whereupon, Deposition Exhibit 4, Memo
20 from Captain Merrill, was marked for
21 identification.)
22 ---
23 ATTORNEY CROOKS: Thank you.
24 I'll let the three of you fellows look at

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1 those documents real quick while I excuse myself for just
2 a moment. I'll be right back. Hopefully, both of us
3 will use our time wisely.
4 ---
5 (WHEREUPON, A SHORT BREAK WAS TAKEN.)
6 ---
7 COURT REPORTER: Back on the record.
8 ATTORNEY JEFFRIES: He's got them.
9 ATTORNEY CROOKS: Yeah. I --- I got them
10 here just so I can ask a couple questions.
11 We're back on the record after a short
12 break.
13 BY ATTORNEY CROOKS:
14 Q. We've identified Kief Exhibit 3 and Kief
15 Exhibit 4. And I believe these documents will more or
16 less prove up the answer you've already given, which is
17 that you kicked it upstairs, I think you said was the ---
18 what you did. You asked your superior for permission to
19 open an investigation.
20 So let me show you Exhibit Number 3. Can you
21 tell us what that is?
22 A. That's an email to my captain, James Merrill,
23 at the time.
24 Q. Okay.

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1 Why were you emailing your Captain?
2 A. Anytime another police officer or public
3 official or whoever --- we have to get permission to
4 investigate them from Charleston, more or less.
5 Q. Why is that?
6 A. I guess they don't want us opening
7 investigations on other police officers or public
8 officials without them knowing it.
9 Q. Okay.
10 Have you ever known a time when you sent an
11 email of this kind, and the response was no you have no
12 authority to open an investigation into this individual?
13 A. No, sir.
14 Q. Can you think of any other time when you ever
15 had to write an email like this and ask for permission to
16 investigate another police officer?
17 A. No, sir.
18 Q. At the time of Kief Exhibit Number 3, which was
19 August 20, 2013, I think, --- am I right?
20 A. Yes, sir.
21 Q. Okay.
22 ATTORNEY JEFFRIES: Correction. August
23 22nd.
24 THE WITNESS: I'm sorry, 22nd, yes.

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1 BY ATTORNEY CROOKS:
2 Q. Okay.
3 A. Yes.
4 Q. Thank you.
5 Kief Exhibit Number 3 is your email of August
6 23 to your captain. It looks like there's a second page
7 to that, and I don't have it. Do you have any memory of
8 this document now that we've looked at it as much as we
9 have? You remember doing this?
10 A. I remember sending an email. I ---.
11 Q. Okay.
12 A. Yeah. Yeah. Yeah, just ---.
13 Q. Best of your recollection, this was the first
14 time you'd ever sent an email of this kind to the captain
15 asking for permission to open an investigation because it
16 concerned a high profile person or a member of the law
17 enforcement community.
18 True?
19 A. True.
20 Q. Okay.
21 I believe --- make a point a point of it to
22 suggest that that might be one of the reasons you have of
23 --- of doing this. You never had to do it before.
24 Did you have any conversations with the captain

26 (Pages 98 to 101)

Page 102

1 on the telephone?

2 A. Yes, sir.

3 Q. Okay.

4 Tell me what you remember.

5 A. I --- I just called him and explained the
6 merits of what was going on with the whole thing. And he
7 said, well, email --- put it in writing. Give me ---
8 give me an email about what --- opening an investigation.

9 Q. Okay.

10 Now, the reason you did this email to Captain
11 Merrill was because Ellen Costlow had come to see you,
12 and she offered to give you a collection of emails from
13 her attorney, Matt Stout?

14 A. Correct.

15 Q. Did you have those emails, and did you review
16 them before you asked for permission from Captain
17 Merrill?

18 A. No, sir.

19 Q. Okay.

20 So you were simply seeking permission to take
21 advantage of the offer that Ellen Costlow had made to you
22 that she would provide this evidence?

23 A. Correct.

24 Q. Okay.

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1 A. Right. We never came to that.

2 Q. That was never necessary in your case, but ---

3 A. No, sir.

4 Q. --- I don't surprise you at all to tell you
5 that a family court judge has that authority?

6 A. It wouldn't surprise me, sir.

7 Q. Did it occur to you that you might refer her to
8 the family court judge rather than open a criminal
9 investigation?

10 A. No, sir.

11 Q. After all, she had cut Kenny Ice in a domestic
12 dispute, and there was no reason to make an arrest or
13 open an investigation into --- into that. And the state
14 police had responded to her residence on at least one
15 occasion and didn't even deem it necessary to make a
16 report.

17 ATTORNEY JEFFRIES: Objection, suspects.

18 BY ATTORNEY CROOKS:

19 Q. In light of --- in light of what we know about
20 the broad discretion that the state police has, I mean,
21 you were under no obligation to open up an investigation
22 into this complaint that Ellen Costlow was making, were
23 you?

24 A. My obligation is to the victim.

Page 103

1 And can you tell me if you had any conversation
2 with Captain Merrill to the effect that there has been
3 some allegations made that there was a sexual
4 relationship between the Complainant, Ellen Costlow, and
5 one of your troopers, Chris Berry?

6 A. I can't remember that, sir.

7 Q. Don't you think that's the sort of thing you
8 --- would be on your mind as you were talking to your
9 captain?

10 A. Again, I can't remember the --- the specifics
11 of the conversation. I don't know if I gave that to him
12 or not. I don't know.

13 Q. Did your captain ask you, look, why do you ---
14 why do you want to get involved in investigating a case
15 that's in front of the family court judge? Why don't you
16 just send her to the family court judge?

17 A. Because we were investigating a criminal
18 complaint, not a civil complaint.

19 Q. You understand that the family court judge
20 would have authority to order restrictions on
21 communication between parties who are divorced?

22 A. Yeah.

23 Q. You've been through a divorce yourself.
24 Right?

Page 105

1 Q. So you felt obliged to Ellen Costlow?

2 A. If there was a criminal infraction, yes.

3 Q. At what point in time did you come to the
4 conclusion that there was enough evidence to seek the
5 criminal warrant for the arrest of Scott Ballock?

6 A. It wasn't mine. I had nothing to do with that,
7 sir.

8 Q. Okay.

9 Were you consulted on it?

10 A. I was being updated on the progress of the
11 investigation.

12 Q. All right.

13 According to Exhibit 3, Captain Merrill wanted
14 to be kept in the loop. He wanted email reports on this.
15 Did you keep him advised?

16 A. That was --- that is not --- that email is not
17 --- I'm sorry. The memo is not sent to me, sir.

18 Q. Pardon me. I --- I'm misspeaking it. I
19 apologize. I'm just trying to move along her, and I'm
20 getting a little ahead of myself.

21 A. That's all right.

22 Q. Let me show you Exhibit Number 4. What is
23 that?

24 A. That is a Troop 1 Memorandum to Corporal

27 (Pages 102 to 105)

Page 106

1 Gaskins of the Morgantown Detachment.
2 Q. Okay.
3 And who's it from?
4 A. Captain Merrill.
5 Q. Okay.
6 And what was Captain Merrill instructing
7 Corporal --- then Corporal Gaskins?
8 A. To open up an investigation.
9 Q. So the fair implication here is that Exhibit 4
10 occurred because it was instigated by Exhibit 3? In
11 other words, you asked Captain Merrill for authority and
12 he granted it. And he personally directed Corporal
13 Gaskins to open the investigation?
14 A. Correct.
15 Q. All right.
16 And the reason this echelon of authority at the
17 state police was directly involved here is because there
18 was an FBI agent at issue.
19 True?
20 A. Yes, sir.
21 Q. Did you make any contact with the FBI in the
22 course of your investigating?
23 A. During the course of the whole ---?
24 Q. Prior to the time that my client was arrested

Page 107

1 on September 13th, 2013, did you contact the FBI?
2 A. I --- I do not know, sir. I cannot remember
3 who contacted the FBI.
4 Q. All right.
5 I take it by your answer that you're satisfied
6 that there was somebody at the state police who contacted
7 the FBI about Scott Ballock prior to his arrest on
8 September 13, 2013?
9 A. Correct.
10 Q. What was the point of that contact?
11 A. Twofold, to let the agency that he was hired
12 under know that there was a criminal investigation being
13 conducted, and two, professional courtesy.
14 Q. Did you direct someone to make that contact?
15 A. I do not remember that, sir.
16 Q. Would corporal Gaskins have had the authority
17 to contact the FBI for the two purposes that you just
18 identified?
19 A. Yes, sir.
20 Q. Okay.
21 Who was in charge of the investigation,
22 Corporal Gaskins?
23 A. He was the investigating officer, sir.
24 Q. Okay.

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1 All right. I appreciate your answering me.
2 Does that mean he was in charge of it?
3 A. Yes, sir.
4 Q. Okay.
5 The reason I'm asking you is Captain Merrill
6 wanted to be kept advised. He wanted to know what was
7 happening with all of this.
8 Right?
9 A. Yes, sir.
10 Q. And presumably, based on what you told me up to
11 this point, Captain Merrill wanted to be kept in the loop
12 because the person under investigation here was a Federal
13 Bureau of Investigation agent?
14 A. Correct.
15 Q. Do you know if Corporal Gaskins, in fact, kept
16 Captain Merrill advised by email? Were you copied on his
17 emails?
18 A. I don't remember. I don't know that, sir. I
19 don't remember being copied on emails.
20 Q. Okay.
21 Captain Merrill in Exhibit number, what is it,
22 4?
23 A. Yes, sir.
24 Q. Did he copy you?

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1 A. On?
2 Q. Did he copy you on his email to --- or his memo
3 to Corporal Gaskins?
4 A. I don't remember that, sir.
5 Q. Does it say?
6 A. No, sir.
7 Q. Well, I only have the one copy, and I'm not
8 looking at it so ---.
9 A. No, sir. It does not.
10 Q. No matter how many times I've been down through
11 this stack, and I've tried to memorize everything, but I
12 guess I'm getting too old to be able to do that.
13 So you have a memory as to whether you were
14 kept advised of the investigation into Ellen Costlow's
15 complaint against Scott Ballock prior to Scott's arrest
16 on September 13, 2013.
17 A. I didn't say that, sir.
18 Q. I'm asking.
19 A. Yes, sir. But you made a statement, and I'm
20 --- that's not correct.
21 Q. Sounded like a statement, but it was intended
22 to be a question. Let me put it a little more clearly
23 for you. Were you kept advised of the investigation into
24 Ellen Costlow's criminal complaints against Scott Ballock

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1 prior to the day of his arrest?

2 A. Yes, sir.

3 **Q. How were you kept advised?**

4 A. I was Corporal Gaskins' supervisor. So he
5 would, you know, periodically talk to me about what's
6 going with the cases, his investigation.

7 **Q. Okay.**

8 **What sort of things would he tell you?**

9 A. Just an update on the investigation, what was
10 going on, what he found.

11 **Q. Okay.**

12 **Based on those periodic briefings, what did you**
13 **understand to be the course of the investigation? How**
14 **did it go down? How did --- how was it done? Was it**
15 **done in compliance of the protocols laid out in Kief**
16 **Exhibit Number 1?**

17 A. I --- I do not know that, sir.

18 **Q. Would it have been your responsibility to see**
19 **to it that Corporal Gaskins complied with the**
20 **requirements laid out in Kief Exhibit Number 1?**

21 A. Explain that.

22 **Q. You're his supervisor?**

23 A. I am his --- was his supervisor, yes, sir.

24 **Q. He was doing an investigation under your**

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1 supervision.

2 A. Yes.

3 **Q. And the captain was being kept in the loop on**
4 **how the investigation proceeded?**

5 A. Correct.

6 **Q. Did you, in fact, make a point to see to it**
7 **that the policies and procedures laid out in Kief Exhibit**
8 **Number 1 were followed in the investigation of Ruth Ellen**
9 **--- Ellen Ruth Costlow's criminal complaint against Scott**
10 **Ballock?**

11 A. It's my opinion that Corporal Gaskins was
12 following all criminal --- the procedures, yes, sir.

13 **Q. Do you know if Captain Merrill was told that**
14 **the decision had been made to seek an arrest warrant for**
15 **Scott Ballock?**

16 A. That's something ---.

17 **Q. Before he was --- let me --- let me restate the**
18 **question. It's been two years. I can almost read the**
19 **transcript. Let me articulate the question.**

20 **Do you know if Captain Merrill was told**
21 **beforehand that the decision had been made to obtain an**
22 **arrest warrant for Scott Ballock?**

23 A. That would've been done, sir.

24 **Q. Why?**

Page 112

1 A. Because before we arrested any police officer
2 or any official, we would've told that to our superiors.

3 **Q. Do you know if Captain Merrill provided express**
4 **authority to proceed?**

5 A. I do not know that, sir.

6 **Q. Do you know if Captain Merrill ever had any**
7 **contact with the FBI?**

8 A. I do not know that, sir.

9 **Q. Now, there was an FBI agent present at the**
10 **family court proceeding on September 13, 2013 when my**
11 **client Scott Ballock was arrested.**

12 **Are you aware of that?**

13 A. Repeat the question, sir.

14 **Q. Sure. The day my client was arrested ---**

15 A. Yes, sir.

16 **Q. --- in family court on the count, there was a**
17 **representative from the FBI present?**

18 A. Correct. Yes, sir.

19 **Q. You know that?**

20 A. Yes, sir.

21 **Q. And in fact, one of the reasons you know that**
22 **is because the state police advised the FBI that we're**
23 **going to execute an arrest warrant for one of your agents**
24 **at the family court proceeding?**

Page 113

1 A. Correct.

2 **Q. Were you the one who notified the FBI of that**
3 **fact for the representative to be there?**

4 A. I do not remember that, sir.

5 **Q. And who actually the arrest warrant?**

6 A. I was there. There was another trooper there
7 when we went upstairs to the magistrate's office to get
8 --- to have Mr. Ballock arraigned. I don't remember
9 whose signature is on the arrest warrant.

10 **Q. I think it was yours.**

11 A. Okay.

12 I --- I can't remember that, sir.

13 **Q. I can show it to you here if we need to.**

14 **So did you interview Scott Ballock before you**
15 **arrested him?**

16 A. No, sir.

17 **Q. Did you reach out to make contact with Scott**
18 **Ballock prior to making the decision to arrest him to let**
19 **him know that you were investigating his communications**
20 **with his wife?**

21 A. I didn't make that decision, sir.

22 **Q. Who did?**

23 A. That'd be the investigating officer and the
24 prosecuting attorney.

29 (Pages 110 to 113)

Page 102

1 on the telephone?

2 A. Yes, sir.

3 Q. Okay.

4 Tell me what you remember.

5 A. I --- I just called him and explained the
6 merits of what was going on with the whole thing. And he
7 said, well, email --- put it in writing. Give me ---
8 give me an email about what --- opening an investigation.

9 Q. Okay.

10 Now, the reason you did this email to Captain
11 Merrill was because Ellen Costlow had come to see you,
12 and she offered to give you a collection of emails from
13 her attorney, Matt Stout?

14 A. Correct.

15 Q. Did you have those emails, and did you review
16 them before you asked for permission from Captain
17 Merrill?

18 A. No, sir.

19 Q. Okay.

20 So you were simply seeking permission to take
21 advantage of the offer that Ellen Costlow had made to you
22 that she would provide this evidence?

23 A. Correct.

24 Q. Okay.

Page 103

1 And can you tell me if you had any conversation
2 with Captain Merrill to the effect that there has been
3 some allegations made that there was a sexual
4 relationship between the Complainant, Ellen Costlow, and
5 one of your troopers, Chris Berry?

6 A. I can't remember that, sir.

7 Q. Don't you think that's the sort of thing you
8 --- would be on your mind as you were talking to your
9 captain?

10 A. Again, I can't remember the --- the specifics
11 of the conversation. I don't know if I gave that to him
12 or not. I don't know.

13 Q. Did your captain ask you, look, why do you ---
14 why do you want to get involved in investigating a case
15 that's in front of the family court judge? Why don't you
16 just send her to the family court judge?

17 A. Because we were investigating a criminal
18 complaint, not a civil complaint.

19 Q. You understand that the family court judge
20 would have authority to order restrictions on
21 communication between parties who are divorced?

22 A. Yeah.

23 Q. You've been through a divorce yourself.
24 Right?

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1 A. Right. We never came to that.

2 Q. That was never necessary in your case, but ---

3 A. No, sir.

4 Q. --- I don't surprise you at all to tell you
5 that a family court judge has that authority?

6 A. It wouldn't surprise me, sir.

7 Q. Did it occur to you that you might refer her to
8 the family court judge rather than open a criminal
9 investigation?

10 A. No, sir.

11 Q. After all, she had cut Kenny Ice in a domestic
12 dispute, and there was no reason to make an arrest or
13 open an investigation into --- into that. And the state
14 police had responded to her residence on at least one
15 occasion and didn't even deem it necessary to make a
16 report.

17 ATTORNEY JEFFRIES: Objection, suspects.

18 BY ATTORNEY CROOKS:

19 Q. In light of --- in light of what we know about
20 the broad discretion that the state police has, I mean,
21 you were under no obligation to open up an investigation
22 into this complaint that Ellen Costlow was making, were
23 you?

24 A. My obligation is to the victim.

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1 Q. So you felt obliged to Ellen Costlow?

2 A. If there was a criminal infraction, yes.

3 Q. At what point in time did you come to the
4 conclusion that there was enough evidence to seek the
5 criminal warrant for the arrest of Scott Ballock?

6 A. It wasn't mine. I had nothing to do with that,
7 sir.

8 Q. Okay.

9 Were you consulted on it?

10 A. I was being updated on the progress of the
11 investigation.

12 Q. All right.

13 According to Exhibit 3, Captain Merrill wanted
14 to be kept in the loop. He wanted email reports on this.
15 Did you keep him advised?

16 A. That was --- that is not --- that email is not
17 --- I'm sorry. The memo is not sent to me, sir.

18 Q. Pardon me. I --- I'm misspeaking it. I
19 apologize. I'm just trying to move along her, and I'm
20 getting a little ahead of myself.

21 A. That's all right.

22 Q. Let me show you Exhibit Number 4. What is
23 that?

24 A. That is a Troop 1 Memorandum to Corporal

27 (Pages 102 to 105)

Page 138

1 produced to us in discovery and marked as Kief Exhibit
2 Number 1 in today's deposition.
3 A. Okay.
4 Q. Am I right?
5 A. Yes, sir.
6 Q. All right.
7 Take a look at page 853 of Deposition Exhibit
8 Number 1 for a second, would you?
9 A. I'm sorry. Got one.
10 Q. I'm looking at 3.02. Proper conduct of a
11 criminal investigation includes, but is not necessarily
12 limited to.
13 ATTORNEY JEFFRIES: Charles, I believe
14 you're on page 851.
15 ATTORNEY CROOKS: Am I?
16 All right.
17 BY ATTORNEY CROOKS:
18 Q. I apologize. Didn't mean to mislead you.
19 Thank you for the ---.
20 A. All right sir.
21 Q. Thank you for bracing me on that. Let me take
22 a fresh line of questioning. We've looking at page 851
23 of Kief Exhibit Number 1. I'm looking specifically at
24 3.02. Proper conduct of a criminal investigation

Page 139

1 includes, but is not necessarily limited to --- are you
2 with me so far?
3 A. Yes, sir. Uh-huh (yes).
4 Q. I'm going to skip past some stuff that doesn't
5 pertain, and focus on parts that I believe do for
6 purposes of my question.
7 A. Uh-huh (yes).
8 Q. Sub-part (c) says locating and interviewing all
9 persons who have or who are thought to have any
10 information concerning the crime under investigation?
11 A. Yes, sir.
12 Q. Well, all persons who have information would
13 certainly include the person who's accused of sending the
14 harassing emails and texts ---
15 A. Yes, sir.
16 Q. --- wouldn't it?
17 A. Uh-huh (yes).
18 Q. So that means to say this policy and procedure
19 called for interviewing Scott Ballock.
20 A. Okay.
21 Q. True?
22 A. As it --- as it is written, yes, sir.
23 Q. So if Scott Ballock was offering to come in and
24 --- and sit for an interview by the state police and/or

Page 140

1 the prosecutor's office, and they turned him down, then
2 they would have been operating in contradiction to this
3 directive in state police policy and procedure?
4 A. Yes, sir.
5 Q. Sub-paragraph (f) says that proper conduct of a
6 criminal investigation also includes, but is not
7 necessarily limited to, locating and questioning those
8 persons suspected of having committed the crime. I mean,
9 that's --- that's saying explicitly that Scott Ballock
10 should've been interviewed if the opportunity presented
11 itself, isn't it?
12 A. Yes, sir.
13 Q. And so if the state police and the person,
14 Corporal Gaskins, whether acting of his own accord or
15 under the direction of Cindy Scott, turned Scott down
16 when he volunteered to come in and give a statement, that
17 wouldn't be fair treatment to Scott, would it?
18 A. I don't know if I would characterize it as
19 that, sir. These are guidelines that we go by, not --- I
20 mean, it's policy and procedure. But the --- we have a
21 lot of leeway about how we conduct a criminal
22 investigation. It's certainly not something that they
23 would be written up or anything like that.
24 Q. A lot of the communications that were at issue

Page 141

1 in the criminal charge for which Scott was arrested,
2 which was later withdrawn by the prosecuting attorney's
3 office, had to do with interactions that Ellen and Kenny
4 Ice, Junior were having. You've looked at those emails
5 enough to --- to know that I'm right about that?
6 Correct?
7 Kenny Ice comes up a lot.
8 A. I'm thinking that's a --- yes. Kenny Ice comes
9 up a lot, yes, sir.
10 Q. And so he would've been somebody who had
11 information concerning the crime under investigation.
12 True?
13 A. He would have knowledge of it, yes, sir.
14 Q. Do you know if Kenny Ice was contacted and
15 interviewed by Corporal Gaskins as part of the ---?
16 A. I do not know that, sir. I don't believe he
17 was.
18 Q. In fact, a lot of the claims that Ellen Costlow
19 made against Scott and many of the subjects addressed by
20 Scott Ballock in his texts and emails to Ellen could've
21 been either corroborated or refuted by Kenny Ice if ---
22 if all the mentions of Kenny Ice are to be taken as
23 credible in those emails.
24 True?

36 (Pages 138 to 141)

Page 146

1 Q. --- I don't want to --- yeah. I don't want to
2 misrepresent what ---.
3 A. Yeah. There's two different things there.
4 Q. Yeah. Your --- just another case of your
5 careful attention to my questions. Thank you.
6 You interviewed Ellen Costlow at the detachment
7 in Morgantown the night before you executed the warrants
8 and arrested Scott?
9 A. I interviewed her, sir?
10 Q. Yeah.
11 A. Okay.
12 I don't remember that.
13 Q. You don't remember doing that?
14 A. No, sir.
15 Q. You don't remember having a discussion with her
16 saying look, you know, we got these warrants. I'm going
17 to execute them tomorrow. What time is your hearing?
18 What time do I need to be there? How did you know?
19 A. I don't believe Ms. Costlow knew we were going
20 to serve those warrants on him that day. It's my
21 recollection we did not tell her.
22 Q. You did not tell her?
23 A. Correct.
24 Q. Okay.

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1 A. We knew that there was a hearing the next day.
2 Q. How did you know that?
3 A. I can't remember how we found out the
4 conversation of how we knew that there was going to be a
5 court hearing the next day.
6 Q. Did you assign Corporal Gaskins, or was that
7 Captain Merrill?
8 A. We discussed having Corporal Gaskins do the
9 investigation.
10 Q. Did you ever interview Ellen Costlow without
11 Corporal Gaskins being present?
12 A. The first time I met Ms. Costlow, the night
13 --- the first night of her asking about the affair. I
14 don't remember having another interview with her. I
15 can't --- I can't recall, sir. I do not know.
16 Q. Did you ever make any recordings of interviews
17 that you conducted with Ellen Costlow?
18 A. I don't remember any, sir, no.
19 Q. Have you ever done that sort of thing in the
20 course of criminal investigations?
21 A. Sure.
22 Q. How about criminal investigations where another
23 member of law enforcement is at issue? Don't you think
24 making a recording of interviews with the complaining

Page 148

1 witness would help in keeping Captain Merrill advised?
2 A. I don't know if I've interviewed a complaining
3 victim, sir. I don't know if I've ever done that before.
4 I've done suspects, but not victims.
5 Q. If Scott Ballock had been interviewed as he
6 offered, and he waived his Fifth Amendment privilege,
7 answered questions, he could have potentially put the
8 rope around his own neck and admitted to criminal
9 activity.
10 True?
11 A. He could have, yes, sir.
12 Q. Wouldn't that have been a good reason to
13 interview him? Doesn't that argue that he would be a
14 credible witness worthy of interviewing in the course of
15 the investigation?
16 ATTORNEY JEFFRIES: Objection. Scott is
17 not with us.
18 BY ATTORNEY CROOKS:
19 Q. If the man is willing to risk his career, and
20 --- and go on to jail to answer questions, doesn't that
21 argue in favor of bringing him and interviewing him?
22 A. Corporal Gaskins did not feel like he needed to
23 interview Mr. Ballock for a reason. I do not know that
24 reason.

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1 Q. Did you ever indicate that you had tried to
2 tape record an interview with Ellen Costlow, but that the
3 recording machine malfunctioned?
4 A. I remember that on a website someplace. I
5 don't recall what that circumstance was. But I remember
6 reading that on one of his websites. But I don't recall
7 the circumstances.
8 Q. You received quite a few emails directly from
9 Ellen Costlow during the course of this investigation.
10 True?
11 A. True.
12 Q. And that was even after Corporal Gaskins had
13 been appointed as the investigating officer?
14 A. True.
15 Q. Did you ever tell Ellen Costlow, look, I'm not
16 the chief investigating officer on this? You should be
17 communicating with Corporal Gaskins?
18 A. No, sir.
19 Q. Why not?
20 A. Couple different things.
21 Q. Why would you have back channel communication
22 with the complainant when somebody else is investigating?
23 A. They're really --- Ms. Costlow was --- her
24 emails are, basically, somebody that wants somebody to

38 (Pages 146 to 149)

Page 106

1 Gaskins of the Morgantown Detachment.
2 Q. Okay.
3 And who's it from?
4 A. Captain Merrill.
5 Q. Okay.
6 And what was Captain Merrill instructing
7 Corporal --- then Corporal Gaskins?
8 A. To open up an investigation.
9 Q. So the fair implication here is that Exhibit 4
10 occurred because it was instigated by Exhibit 3? In
11 other words, you asked Captain Merrill for authority and
12 he granted it. And he personally directed Corporal
13 Gaskins to open the investigation?
14 A. Correct.
15 Q. All right.
16 And the reason this echelon of authority at the
17 state police was directly involved here is because there
18 was an FBI agent at issue.
19 True?
20 A. Yes, sir.
21 Q. Did you make any contact with the FBI in the
22 course of your investigating?
23 A. During the course of the whole ---?
24 Q. Prior to the time that my client was arrested

Page 107

1 on September 13th, 2013, did you contact the FBI?
2 A. I --- I do not know, sir. I cannot remember
3 who contacted the FBI.
4 Q. All right.
5 I take it by your answer that you're satisfied
6 that there was somebody at the state police who contacted
7 the FBI about Scott Ballock prior to his arrest on
8 September 13, 2013?
9 A. Correct.
10 Q. What was the point of that contact?
11 A. Twofold, to let the agency that he was hired
12 under know that there was a criminal investigation being
13 conducted, and two, professional courtesy.
14 Q. Did you direct someone to make that contact?
15 A. I do not remember that, sir.
16 Q. Would corporal Gaskins have had the authority
17 to contact the FBI for the two purposes that you just
18 identified?
19 A. Yes, sir.
20 Q. Okay.
21 Who was in charge of the investigation,
22 Corporal Gaskins?
23 A. He was the investigating officer, sir.
24 Q. Okay.

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1 All right. I appreciate your answering me.
2 Does that mean he was in charge of it?
3 A. Yes, sir.
4 Q. Okay.
5 The reason I'm asking you is Captain Merrill
6 wanted to be kept advised. He wanted to know what was
7 happening with all of this.
8 Right?
9 A. Yes, sir.
10 Q. And presumably, based on what you told me up to
11 this point, Captain Merrill wanted to be kept in the loop
12 because the person under investigation here was a Federal
13 Bureau of Investigation agent?
14 A. Correct.
15 Q. Do you know if Corporal Gaskins, in fact, kept
16 Captain Merrill advised by email? Were you copied on his
17 emails?
18 A. I don't remember. I don't know that, sir. I
19 don't remember being copied on emails.
20 Q. Okay.
21 Captain Merrill in Exhibit number, what is it,
22 4?
23 A. Yes, sir.
24 Q. Did he copy you?

Page 109

1 A. On?
2 Q. Did he copy you on his email to --- or his memo
3 to Corporal Gaskins?
4 A. I don't remember that, sir.
5 Q. Does it say?
6 A. No, sir.
7 Q. Well, I only have the one copy, and I'm not
8 looking at it so ---.
9 A. No, sir. It does not.
10 Q. No matter how many times I've been down through
11 this stack, and I've tried to memorize everything, but I
12 guess I'm getting too old to be able to do that.
13 So you have a memory as to whether you were
14 kept advised of the investigation into Ellen Costlow's
15 complaint against Scott Ballock prior to Scott's arrest
16 on September 13, 2013.
17 A. I didn't say that, sir.
18 Q. I'm asking.
19 A. Yes, sir. But you made a statement, and I'm ---
20 --- that's not correct.
21 Q. Sounded like a statement, but it was intended
22 to be a question. Let me put it a little more clearly
23 for you. Were you kept advised of the investigation into
24 Ellen Costlow's criminal complaints against Scott Ballock

28 (Pages 106 to 109)

Page 138

1 produced to us in discovery and marked as Kief Exhibit
2 Number 1 in today's deposition.
3 A. Okay.
4 Q. Am I right?
5 A. Yes, sir.
6 Q. All right.
7 Take a look at page 853 of Deposition Exhibit
8 Number 1 for a second, would you?
9 A. I'm sorry. Got one.
10 Q. I'm looking at 3.02. Proper conduct of a
11 criminal investigation includes, but is not necessarily
12 limited to.
13 ATTORNEY JEFFRIES: Charles, I believe
14 you're on page 851.
15 ATTORNEY CROOKS: Am I?
16 All right.
17 BY ATTORNEY CROOKS:
18 Q. I apologize. Didn't mean to mislead you.
19 Thank you for the ---.
20 A. All right sir.
21 Q. Thank you for bracing me on that. Let me take
22 a fresh line of questioning. We've looking at page 851
23 of Kief Exhibit Number 1. I'm looking specifically at
24 3.02. Proper conduct of a criminal investigation

Page 139

1 includes, but is not necessarily limited to --- are you
2 with me so far?
3 A. Yes, sir. Uh-huh (yes).
4 Q. I'm going to skip past some stuff that doesn't
5 pertain, and focus on parts that I believe do for
6 purposes of my question.
7 A. Uh-huh (yes).
8 Q. Sub-part (c) says locating and interviewing all
9 persons who have or who are thought to have any
10 information concerning the crime under investigation?
11 A. Yes, sir.
12 Q. Well, all persons who have information would
13 certainly include the person who's accused of sending the
14 harassing emails and texts ---
15 A. Yes, sir.
16 Q. --- wouldn't it?
17 A. Uh-huh (yes).
18 Q. So that means to say this policy and procedure
19 called for interviewing Scott Ballock.
20 A. Okay.
21 Q. True?
22 A. As it --- as it is written, yes, sir.
23 Q. So if Scott Ballock was offering to come in and
24 --- and sit for an interview by the state police and/or

Page 140

1 the prosecutor's office, and they turned him down, then
2 they would have been operating in contradiction to this
3 directive in state police policy and procedure?
4 A. Yes, sir.
5 Q. Sub-paragraph (f) says that proper conduct of a
6 criminal investigation also includes, but is not
7 necessarily limited to, locating and questioning those
8 persons suspected of having committed the crime. I mean,
9 that's --- that's saying explicitly that Scott Ballock
10 should've been interviewed if the opportunity presented
11 itself, isn't it?
12 A. Yes, sir.
13 Q. And so if the state police and the person,
14 Corporal Gaskins, whether acting of his own accord or
15 under the direction of Cindy Scott, turned Scott down
16 when he volunteered to come in and give a statement, that
17 wouldn't be fair treatment to Scott, would it?
18 A. I don't know if I would characterize it as
19 that, sir. These are guidelines that we go by, not --- I
20 mean, it's policy and procedure. But the --- we have a
21 lot of leeway about how we conduct a criminal
22 investigation. It's certainly not something that they
23 would be written up or anything like that.
24 Q. A lot of the communications that were at issue

Page 141

1 in the criminal charge for which Scott was arrested,
2 which was later withdrawn by the prosecuting attorney's
3 office, had to do with interactions that Ellen and Kenny
4 Ice, Junior were having. You've looked at those emails
5 enough to --- to know that I'm right about that?
6 Correct?
7 Kenny Ice comes up a lot.
8 A. I'm thinking that's a --- yes. Kenny Ice comes
9 up a lot, yes, sir.
10 Q. And so he would've been somebody who had
11 information concerning the crime under investigation.
12 True?
13 A. He would have knowledge of it, yes, sir.
14 Q. Do you know if Kenny Ice was contacted and
15 interviewed by Corporal Gaskins as part of the ---?
16 A. I do not know that, sir. I don't believe he
17 was.
18 Q. In fact, a lot of the claims that Ellen Costlow
19 made against Scott and many of the subjects addressed by
20 Scott Ballock in his texts and emails to Ellen could've
21 been either corroborated or refuted by Kenny Ice if ---
22 if all the mentions of Kenny Ice are to be taken as
23 credible in those emails.
24 True?

36 (Pages 138 to 141)

Page 50

1 aware of that?
2 A. I --- I'm sorry. I'm misconstruing your
3 question. She did not initiate ---.
4 **Q. I may have confused you without intending to.**
5 **You worked in the Morgantown Detachment ---**
6 A. Yes, sir.
7 **Q. --- of the state police between 2012 and 2015?**
8 A. Yes, sir.
9 **Q. You were a sergeant?**
10 A. Yes, sir.
11 **Q. And my question has to do with some of the**
12 **merits that we're litigating in this civil action.**
13 A. Sure. Yes, sir.
14 **Q. Okay.**
15 **I'm asking you do you remember, generally, that**
16 **Ellen Ruth Costlow initiated at least one criminal**
17 **complaint against my client, Scott Ballock, during that**
18 **time.**
19 A. That was not her intent when she came into the
20 state police detachment.
21 **Q. Okay.**
22 **What was her intent, as far as you were able to**
23 **discern?**
24 A. A complaint against Trooper Berry.

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1 **Q. Against Trooper Berry?**
2 A. Yes, sir.
3 **Q. All right.**
4 **Tell me about that. When was it, first of all?**
5 A. It was my first contact with Tom Ballock,
6 Senior. He had called in to the state police barracks to
7 let us know, or let me know --- he asked for a supervisor
8 --- to let me know that Chris Berry was having an affair
9 with his daughter-in-law or soon to be daughter-in-law.
10 That conversation was short. There was a
11 couple of questions that I had that he answered.
12 **Q. What were those?**
13 A. I asked him what his relationship was to Ms.
14 Costlow. He said he was the father-in-law. I asked him
15 why he was making the complaint instead of her husband.
16 I don't remember how he responded to that, if he did. I
17 asked him if he wanted to make a formal complaint, and he
18 declined to do so.
19 **Q. So you offered to facilitate the filing of a**
20 **formal complaint?**
21 A. Yes.
22 **Q. And your recollection is that Tom, Senior ---?**
23 A. He said he didn't want to do that.
24 **Q. Did he explain why?**

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1 A. No, sir, he did not.
2 **Q. Is that the end of your contact with Tom,**
3 **Senior?**
4 A. Yes, sir. I believe so.
5 **Q. When was that?**
6 A. That was --- I do not know that, sir, not
7 without looking at --- it was the first time that I knew
8 of Mr. Ballock and knew of the situation.
9 **Q. Okay.**
10 **So Ellen Ruth Costlow ---**
11 A. Yes, sir.
12 **Q. --- comes in the picture next.**
13 A. Trooper Berry did first, yes.
14 **Q. All right.**
15 **Trooper Berry. Go ahead. Tell me what you**
16 **remember.**
17 A. I called Trooper Berry, and told him about the
18 allegation. He denied it. I asked him to come in and
19 speak to me. He did. He --- he came in. He did --- I
20 looked at his cell phone. He let me see his cell phone,
21 and there wasn't anything on there that --- that gave me
22 concern or no --- no proving or disproving of a --- of a
23 relationship.
24 **Q. Were there any communications on Trooper**

Page 53

1 **Berry's cell phone ---?**
2 A. I don't remember that. I'm sorry. Go ahead.
3 **Q. You're cooperating with me, and I appreciate**
4 **it, but we're --- we're kind of getting comfortable with**
5 **each other so you're kind of anticipating my question and**
6 **overrunning it a little bit. That's not disrespectful.**
7 **It's just how it works with humans. So let me, without**
8 **being rude to you, suggest that you need to let me finish**
9 **the question.**
10 A. Absolutely.
11 **Q. Okay.**
12 **That way the transcript will --- will read a**
13 **lot better.**
14 A. Got you.
15 **Q. You examined Christopher Berry's cell phone as**
16 **part of your inquiry into, this informal complaint we'll**
17 **call it, ---**
18 A. Right.
19 **Q. --- that Tom Ballock, Senior had phoned in to**
20 **you?**
21 A. Correct.
22 **Q. All right.**
23 **In those days, there in Morgantown Detachment,**
24 **were troopers using an official West Virginia State**

14 (Pages 50 to 53)

Page 54

1 Police phone, and then maintaining a --- a separate
2 personal phone?
3 A. No, sir.
4 Q. Okay. All right.
5 So if a state police trooper like Christopher
6 Berry had to conduct state police business on the
7 telephone as opposed to over the radio, he would just use
8 his own personal phone?
9 A. Yes, sir.
10 Q. Okay.
11 Likewise, if Trooper Berry wanted to use his
12 cell phone for his own personal, private own business,
13 it'd be that same phone?
14 A. True. Yes, sir.
15 Q. Okay.
16 So you weren't --- you weren't trying to, you
17 know, examine some official phone versus ---
18 A. No, sir.
19 Q. --- his personal phone?
20 A. No, sir.
21 Q. All right.
22 That's all. That's the only point I'm trying
23 to make clear here. Sources of evidence, you know.
24 So you looked at his phone. Did you find that

Page 55

1 Christopher Berry had communicated directly with Ellen
2 Ruth Costlow using his cell phone?
3 A. I don't remember that, sir. I do not remember
4 if there was any communications between him and her on
5 there. I remember that there wasn't anything --- there
6 wasn't anything proving an allegation on his cell phone.
7 I don't remember specific conversation between him and
8 her on the cell phone. It's been so many years. I --- I
9 don't remember that point.
10 Q. When you say you examined his phone, what did
11 you look at, specifically as you can tell me?
12 A. Text messages.
13 Q. So you looked at text messages?
14 A. Yes.
15 Q. Did you look at the call history?
16 A. Yes, sir.
17 Q. All right.
18 Anything else?
19 A. No, sir. No, sir.
20 Q. These cell phones, you can do all kinds of
21 things?
22 A. Yes. Yes. Yes.
23 Q. I use mine for email.
24 A. Yes.

Page 56

1 Q. Did you look at Christopher Berry's email
2 account?
3 A. No, sir. I did not.
4 Q. Okay.
5 A. He was letting me look at his cell phone, his
6 personal cell phone so ---.
7 Q. Well, you had legitimate reason to do so.
8 Right?
9 A. Right.
10 Q. All right.
11 You were the sergeant for the detachment?
12 A. One of the sergeants, yes, sir.
13 Q. Okay.
14 I take it was within your scope of
15 responsibilities as a sergeant in the detachment to make
16 the inquiry of Christopher Berry that you made?
17 A. Yes, sir.
18 Q. Okay.
19 Did you consider this to be an investigation
20 that would be reported to the ---?
21 A. Professional Standards Unit?
22 Q. Professional Standards Unit, yeah.
23 A. Depending on what I found.
24 Q. Explain that answer to me with a little more

Page 57

1 detail.
2 A. If he was conducting a relationship or --- or
3 activities on duty that --- that weren't --- if he was
4 doing something extracurricular on duty, then that would
5 be a problem.
6 Q. Okay.
7 Was Chris Berry married at that time?
8 A. I do not know his married status.
9 Q. Okay.
10 I think we've already established that there's
11 nothing, per se, inappropriate about state police
12 officers, troopers, having personal relationships with
13 civilians?
14 A. Correct.
15 Q. That in and of itself is perfectly fine?
16 A. Yes, sir.
17 Q. Likewise, if Chris Berry was having a
18 relationship with Ellen Ruth Costlow at that time,
19 whenever it was that Tom Ballock called and
20 complained, ---
21 A. Yes, sir.
22 Q. --- that was not necessarily a problem to your
23 way of thinking unless it was taking up company time?
24 A. Correct.

15 (Pages 54 to 57)

Page 58

1 Q. After looking Trooper Berry's cell phone, you
2 were satisfied that there was -- there was nothing that
3 you could see in the text app or the call history to
4 suggest that he was, in fact, having a relationship with
5 Ellen Ruth Costlow. Is that ---
6 A. Correct.
7 Q. --- to the best of your memory?
8 A. Yes, sir.
9 Q. But you're not able to recall whether there
10 might've been evidence of direct communication between
11 Chris Berry and Ellen Ruth Costlow on his cell phone?
12 A. Correct.
13 Q. There may be very --- there may very well have
14 been communication between Chris Berry and Ellen Ruth
15 Costlow on Chris Berry's cell phone?
16 A. Yes, sir. That point, I cannot remember.
17 Q. Okay.
18 ATTORNEY JEFFRIES: Are we at a breaking
19 point, Charles? Break wanted.
20 What time is it?
21 COURT REPORTER: 2:10, and we can go off
22 the record.
23 ---
24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

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1 ---
2 ATTORNEY CROOKS: We can go back on the
3 record.
4 BY ATTORNEY CROOKS:
5 Q. Okay.
6 Just before we took our short break, we were
7 talking about a timeframe that we'll probably be able to
8 pin down more precisely by reference to the voluminous
9 document productions that have been made.
10 But doing the best we can from memory, it
11 sounds like you --- you heard from Tom Ballock, Senior by
12 his way of calling --- asking for the person in charge at
13 the barracks. Got you. He complained about Chris Berry.
14 And then you got in touch with Trooper Berry,
15 talked to him. He denied the relationship with Ellen
16 Ruth Costlow. You looked at his cell phone. Can't
17 remember exactly what you found, but you're confident
18 that you certainly didn't find anything that prompted you
19 to act further on that particular inquiry.
20 Have I summed all that up correctly?
21 A. Correct. Yes, sir.
22 Q. Okay.
23 Did you do anything else at that point to
24 investigate Tom Ballock, Senior's complaint about Trooper

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1 Berry?
2 A. Yes, sir.
3 Q. What did you do?
4 A. Called Ms. Costlow.
5 Q. All right.
6 How'd you --- how'd you know how to get in
7 touch with her? Did Tom Ballock give you that
8 information, or ---?
9 A. I don't remember how I found that out. No,
10 sir, I don't remember that.
11 Q. Didn't get it off Trooper Berry's phone, did
12 you?
13 A. I doubt that, sir. I don't remember how I got
14 her --- her phone information.
15 Q. Okay.
16 Well, you can't say for sure that there wasn't
17 communication between Trooper Berry and Ellen Costlow, so
18 it's possible you did get it from his phone?
19 A. Again, I don't know, sir.
20 Q. All right.
21 So tell me about this. Did you go to see her?
22 Did she come to see you? Did you just talk over the
23 phone? How did this go down?
24 A. I --- I called her on the phone, had a

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1 conversation with her on the phone.
2 Q. Okay.
3 Walk me through what you remember about that.
4 A. I told her why I was calling. She --- she got
5 upset and denied any affair with Trooper Berry. And she
6 made the comment --- a comment about --- and I don't know
7 exactly word for word, but she made the comment she was
8 being harassed.
9 Q. By whom?
10 A. I don't believe she even said that, sir. I
11 don't remember the whole gist of the conversation. Being
12 wronged, though.
13 She asked if she could come into the state
14 police barracks to talk to me. I said, well, sure if you
15 have a complaint you would like to make or --- or talk to
16 me, that's fine. So she came in.
17 Q. Have you told me everything you can recall
18 about your first telephone discussion with her?
19 A. No, sir. That's about the --- the vague ---
20 the vague memory I have of it.
21 Q. Did you make notes of your conversation with
22 Tom Ballock, Senior, your discussion with Trooper Berry,
23 and your phone call with Ellen Ruth Costlow?
24 A. I believe I jotted a few things down talking to

16 (Pages 58 to 61)

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1 aware of that?
2 A. I --- I'm sorry. I'm misconstruing your
3 question. She did not initiate ---.
4 **Q. I may have confused you without intending to.**
5 **You worked in the Morgantown Detachment ---**
6 A. Yes, sir.
7 **Q. --- of the state police between 2012 and 2015?**
8 A. Yes, sir.
9 **Q. You were a sergeant?**
10 A. Yes, sir.
11 **Q. And my question has to do with some of the**
12 **merits that we're litigating in this civil action.**
13 A. Sure. Yes, sir.
14 **Q. Okay.**
15 **I'm asking you do you remember, generally, that**
16 **Ellen Ruth Costlow initiated at least one criminal**
17 **complaint against my client, Scott Ballock, during that**
18 **time.**
19 A. That was not her intent when she came into the
20 state police detachment.
21 **Q. Okay.**
22 **What was her intent, as far as you were able to**
23 **discern?**
24 A. A complaint against Trooper Berry.

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1 **Q. Against Trooper Berry?**
2 A. Yes, sir.
3 **Q. All right.**
4 **Tell me about that. When was it, first of all?**
5 A. It was my first contact with Tom Ballock,
6 Senior. He had called in to the state police barracks to
7 let us know, or let me know --- he asked for a supervisor
8 --- to let me know that Chris Berry was having an affair
9 with his daughter-in-law or soon to be daughter-in-law.
10 That conversation was short. There was a
11 couple of questions that I had that he answered.
12 **Q. What were those?**
13 A. I asked him what his relationship was to Ms.
14 Costlow. He said he was the father-in-law. I asked him
15 why he was making the complaint instead of her husband.
16 I don't remember how he responded to that, if he did. I
17 asked him if he wanted to make a formal complaint, and he
18 declined to do so.
19 **Q. So you offered to facilitate the filing of a**
20 **formal complaint?**
21 A. Yes.
22 **Q. And your recollection is that Tom, Senior ---?**
23 A. He said he didn't want to do that.
24 **Q. Did he explain why?**

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1 A. No, sir, he did not.
2 **Q. Is that the end of your contact with Tom,**
3 **Senior?**
4 A. Yes, sir. I believe so.
5 **Q. When was that?**
6 A. That was --- I do not know that, sir, not
7 without looking at --- it was the first time that I knew
8 of Mr. Ballock and knew of the situation.
9 **Q. Okay.**
10 **So Ellen Ruth Costlow ---**
11 A. Yes, sir.
12 **Q. --- comes in the picture next.**
13 A. Trooper Berry did first, yes.
14 **Q. All right.**
15 **Trooper Berry. Go ahead. Tell me what you**
16 **remember.**
17 A. I called Trooper Berry, and told him about the
18 allegation. He denied it. I asked him to come in and
19 speak to me. He did. He --- he came in. He did --- I
20 looked at his cell phone. He let me see his cell phone,
21 and there wasn't anything on there that --- that gave me
22 concern or no --- no proving or disproving of a --- of a
23 relationship.
24 **Q. Were there any communications on Trooper**

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1 **Berry's cell phone ---?**
2 A. I don't remember that. I'm sorry. Go ahead.
3 **Q. You're cooperating with me, and I appreciate**
4 **it, but we're --- we're kind of getting comfortable with**
5 **each other so you're kind of anticipating my question and**
6 **overrunning it a little bit. That's not disrespectful.**
7 **It's just how it works with humans. So let me, without**
8 **being rude to you, suggest that you need to let me finish**
9 **the question.**
10 A. Absolutely.
11 **Q. Okay.**
12 **That way the transcript will --- will read a**
13 **lot better.**
14 A. Got you.
15 **Q. You examined Christopher Berry's cell phone as**
16 **part of your inquiry into, this informal complaint we'll**
17 **call it, ---**
18 A. Right.
19 **Q. --- that Tom Ballock, Senior had phoned in to**
20 **you?**
21 A. Correct.
22 **Q. All right.**
23 **In those days, there in Morgantown Detachment,**
24 **were troopers using an official West Virginia State**

14 (Pages 50 to 53)

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1 investigation?

2 A. Yes, sir.

3 **Q. If a state police officer, trooper, had a**
4 **romantic relationship --- and by that, I mean a**
5 **relationship that included sexual relations --- with a**
6 **member of the public, would it be considered unethical**
7 **for that trooper to investigate a complaint filed by that**
8 **person?**

9 A. I don't understand your question.

10 **Q. Sure.**

11 A. Is it unethical for a trooper to have a sexual
12 relation with another person or ---?

13 **Q. I presume it's not unethical for troopers to**
14 **have sexual relationships. My question has to do with**
15 **the propriety of a state trooper having a sexual**
16 **relationship with a member of the public, and then acting**
17 **in an official capacity to investigate a complaint made**
18 **by the person with whom they have a sexual relationship.**
19 **Would that be considered appropriate conduct on the part**
20 **of the state trooper?**

21 A. I --- I guess it would be --- it would be
22 determined by what that investigation was. There's all
23 different forms of investigations. I don't know. It's
24 kind of a broad question.

1 it?

2 A. Impartiality to ---?

3 **Q. His lack of impartiality when he received that.**
4 **If a trooper is having a sexual relationship with a**
5 **member of the public, that by itself is not a problem?**

6 A. No, sir. Unless it's on duty.

7 **Q. Unless it's during ---**

8 A. Right.

9 **Q. --- work hours.**

10 **Okay.**

11 **I understand that. I don't know if my**
12 **information is that precise.**

13 **The point that I'm touching on currently here**
14 **has to do with if a trooper --- in this case we're**
15 **talking about Christopher Berry ---**

16 A. Yes, sir.

17 **Q. --- having a sexual relationship with a member**
18 **of the public. And we're talking about Ellen Ruth**
19 **Costlow?**

20 A. Yes, sir.

21 **Q. And she wanted to make a criminal complaint**
22 **against her then estranged husband, Scott Ballock, ---**

23 A. Yes, sir.

24 **Q. --- my client, ---**

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1 **Q. Do you know if Christopher Berry, Trooper**
2 **Christopher Berry, ever had a sexual relationship with**
3 **Ellen Ruth Costlow?**

4 A. I do not know that. No, sir.

5 **Q. If Christopher Berry had a personal**
6 **relationship with Ellen Ruth Costlow, and she wanted to**
7 **file a complaint against her estranged husband at the**
8 **time, my client, ---**

9 A. Right.

10 **Q. --- Scott Ballock, ---**

11 A. Yes, sir.

12 **Q. --- would it have been appropriate for Chris**
13 **Berry to participate in any way in the investigation of**
14 **that complaint?**

15 A. If a trooper was having a sexual relationship
16 with a person, and for him to be personally involved with
17 making a complaint against her ex-husband or --- or a
18 family member would be improper.

19 **Q. Why?**

20 A. He wouldn't be a non-biased person.

21 **Q. Why would that be a problem?**

22 A. Because he would have emotional connection with
23 the person he's making a complaint about.

24 **Q. That would explain his impartiality, wouldn't**

1 A. Yes, sir.

2 **Q. --- it would be inappropriate for Christopher**
3 **Berry to either participate directly or to try and**
4 **influence his colleagues at the state police in the**
5 **investigation of the complaint that Ellen Ruth Costlow**
6 **might have made against my client?**

7 A. Yes, sir.

8 **Q. One of the reasons ---.**

9 A. I'm not avoiding your question. I'm just
10 trying to make sure we --- we're clear.

11 **Q. I appreciate that.**

12 A. Okay.

13 **Q. I appreciate your careful attention to my**
14 **questions because these are lawyerly questions. There's**
15 **a lot of stuff in it, and I can tell you're paying close**
16 **attention.**

17 A. Okay.

18 **Q. I appreciate it.**

19 **Thank you.**

20 **I'll try to be clearer with you. I don't --- I**
21 **don't have any problem with your asking for**
22 **clarification. I want to make sure we understand one**
23 **another.**

24 A. Yes, sir.

12 (Pages 42 to 45)

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1 Gaskins of the Morgantown Detachment.
2 Q. Okay.
3 And who's it from?
4 A. Captain Merrill.
5 Q. Okay.
6 And what was Captain Merrill instructing
7 Corporal --- then Corporal Gaskins?
8 A. To open up an investigation.
9 Q. So the fair implication here is that Exhibit 4
10 occurred because it was instigated by Exhibit 3? In
11 other words, you asked Captain Merrill for authority and
12 he granted it. And he personally directed Corporal
13 Gaskins to open the investigation?
14 A. Correct.
15 Q. All right.
16 And the reason this echelon of authority at the
17 state police was directly involved here is because there
18 was an FBI agent at issue.
19 True?
20 A. Yes, sir.
21 Q. Did you make any contact with the FBI in the
22 course of your investigating?
23 A. During the course of the whole ---?
24 Q. Prior to the time that my client was arrested

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1 All right. I appreciate your answering me.
2 Does that mean he was in charge of it?
3 A. Yes, sir.
4 Q. Okay.
5 The reason I'm asking you is Captain Merrill
6 wanted to be kept advised. He wanted to know what was
7 happening with all of this.
8 Right?
9 A. Yes, sir.
10 Q. And presumably, based on what you told me up to
11 this point, Captain Merrill wanted to be kept in the loop
12 because the person under investigation here was a Federal
13 Bureau of Investigation agent?
14 A. Correct.
15 Q. Do you know if Corporal Gaskins, in fact, kept
16 Captain Merrill advised by email? Were you copied on his
17 emails?
18 A. I don't remember. I don't know that, sir. I
19 don't remember being copied on emails.
20 Q. Okay.
21 Captain Merrill in Exhibit number, what is it,
22 4?
23 A. Yes, sir.
24 Q. Did he copy you?

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1 on September 13th, 2013, did you contact the FBI?
2 A. I --- I do not know, sir. I cannot remember
3 who contacted the FBI.
4 Q. All right.
5 I take it by your answer that you're satisfied
6 that there was somebody at the state police who contacted
7 the FBI about Scott Ballock prior to his arrest on
8 September 13, 2013?
9 A. Correct.
10 Q. What was the point of that contact?
11 A. Twofold, to let the agency that he was hired
12 under know that there was a criminal investigation being
13 conducted, and two, professional courtesy.
14 Q. Did you direct someone to make that contact?
15 A. I do not remember that, sir.
16 Q. Would corporal Gaskins have had the authority
17 to contact the FBI for the two purposes that you just
18 identified?
19 A. Yes, sir.
20 Q. Okay.
21 Who was in charge of the investigation,
22 Corporal Gaskins?
23 A. He was the investigating officer, sir.
24 Q. Okay.

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1 A. On?
2 Q. Did he copy you on his email to --- or his memo
3 to Corporal Gaskins?
4 A. I don't remember that, sir.
5 Q. Does it say?
6 A. No, sir.
7 Q. Well, I only have the one copy, and I'm not
8 looking at it so ---.
9 A. No, sir. It does not.
10 Q. No matter how many times I've been down through
11 this stack, and I've tried to memorize everything, but I
12 guess I'm getting too old to be able to do that.
13 So you have a memory as to whether you were
14 kept advised of the investigation into Ellen Costlow's
15 complaint against Scott Ballock prior to Scott's arrest
16 on September 13, 2013.
17 A. I didn't say that, sir.
18 Q. I'm asking.
19 A. Yes, sir. But you made a statement, and I'm
20 --- that's not correct.
21 Q. Sounded like a statement, but it was intended
22 to be a question. Let me put it a little more clearly
23 for you. Were you kept advised of the investigation into
24 Ellen Costlow's criminal complaints against Scott Ballock

28 (Pages 106 to 109)